

## REMARKS

Claims 13-20, 22-26, 28-59 and 63-67 remain pending in the application. Claims 60-62 have been cancelled without prejudice since they are directed to a non-elected invention. Applicant has amended claims 31, 52 and 64. Pending claims 13-17, 20, 22-26, 28-59 and 63-67 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bane, III (5,441,170) in view of Aghassipour (5,595,320). Claims 33-34 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bane and Aghassipour and further in view of McCord (728,749). Claims 18-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bane in view of Aghassipour and, further, in view of Becker (4,929,094). Applicant respectfully traverses these rejections for the reasons set forth below.

All of the rejections set forth in the Office Action of November 2, 2004 use the Bane patent (5,441,170) as the primary reference. The Bane reference differs significantly from Applicant's claimed invention. In addition, the combinations made out by the Examiner to form the obviousness rejections are believed to be improper. There is not motivation or suggestion to combine the secondary references cited by the Examiner with the Bane reference as the Examiner has. Combining the references as indicated by the Examiner would require one to move in a completely opposite and contrary direction to the teaching of the Bane reference and render the device inoperable for its stated purpose. As such, the Bane reference teaches squarely away from the combination than the references utilized by the Examiner to form the obviousness rejections in this case.

The Bane reference differs in several major ways from Applicant's claimed invention. The spill containment device (L) of Bane is specifically stated to be plastic and not exhibit insulative characteristics. The reference states that the liner is usable for shipping non-sensitive

materials such as a microscope separate from temperature sensitive materials which require separate insulated panels to be inserted into the box (see e.g., column 4, lines 41-46).

In contrast to Applicant's claimed invention, Bane teaches a shipping container with multiple insulated inner compartments. Bane specifically states that conventional insulated shipping containers are not adequate for thermally insulating each of a number of objects in separate compartments for shipping things such as organ transplants or the like to distant locations, taking up to a hundred hours or more for shipping time. Bane also states that the materials being shipped must be protected from violent impacts and rough handling. Consequently, the inner container of Bane is required to have substantial structural integrity and be capable of withstanding point impacts of substantial force.

All embodiments of the Bane patent teach that the only way to arrive at the goals of substantial structural integrity, a high degree of insulation and a plurality of separate compartments within the container that do not effect other compartments is to utilize utilized rigid panels of polyisocyanurate core each having a minimum thickness of at least approximately  $\frac{1}{2}$  inch (col. 4, lines 54-63). Nowhere does Bane teach or suggest the possibility of using the spill containment device (L) as the insulator or by combining the insulating panels or other insulated material within the inner spill containment device. The structure and purpose of the inner container is only to contain spills.

The examiner attempts to combine the Bane reference with Aghassipour to reject most of applicant's claims, stating that it would have been obvious to one having ordinary skill in the art at the time of invention to provide an insulating material in the container of Bane having a metalized surface extending throughout the wall and flexible bubble pack material as taught by Aghassipour to keep contents cold for substantially long periods of time. Applicant submits that

there would be no suggestion or motivation in the based reference Bane to do so since Bane teaches that the multiple insulating panels are separate from the spill containment device, they are rigid and not flexible and they must impart substantial structural integrity. Combining the material cited in Aghassipour into the spill containment device would be contrary to the teaching that thick  $\frac{1}{2}$  inch polycore materials are required to maintain extreme temperatures and also, being a flexible material it would not impart sufficient structural rigidity. This would require destruction of the Bane device for its intended purpose and be completely contrary to the teaching therein.

The next major distinction is that the height of the walls of the spill containment device at Bane are not adjustable let alone adjustable between a first position, wherein the outer surface of the top is in contact with the inner surface of the outer container to a second position where it is not in such contact. In all illustrated embodiments of Bane, the spill containment device is capable of being only in a single position when the outer container is closed. This is because in all embodiments of Bane the full height of the outer container is taken up by the insulated box 40, which is formed by the insulated panels. As such, in order for the box and outer container to maintain their structural rigidity, the spill containment device can not occupy a position where the top thereof is movable from a first position wherein it contacts the top of the inner surface of the outer container to a second position wherein it does not contact the inner surface of the top of the outer container when the outer container is closed such as set forth, for example in claims 37, 42, 43 and 64. Bane does not teach or suggest this taken alone or in combination with the other references.

Similar to the arguments set for the above, the spill containment device of Bane is not taught or suggested to be in contact with the perishable contents of the container such as set forth

in, for example, applicant's claim 64. As a result, Bane can not make out this position due to the rigid panels of inner container that is contained within the spill containment device. As set forth above, there is no teaching or suggestion Bane to remove these panels in use since to do so would result in inadequate insulation and would remove the required structural rigidity to the outer container. As a result, none of the other cited references make up for this deficiency even if it is assumed that they are properly combinable.

Another set of differences between Applicant's claimed invention and the Bane reference taken alone or in combination with the other cited references, relate to the structure and function of the spill containment device itself. The Bane spill containment device has a top formed by four top panels 33, 35, 37, and 39, respectively. The respective end panels 33 and 37 are folded over each other and the respective 33 and 39 are folded over each other and over the end panels in order to form the top. The stated purpose of this construction is to close the spill containment device and create additional cushioning (col.3, line 23-28).

In contrast to this construction, Applicant's construction as set forth claim 52, for example, specifically states that the front and back flaps of the inner container do not overlap each other. This is important since it eases the adjustment of the height of the side walls without having the flaps interfere with each other and/or prevent that adjustment. Since the Bane top construction requires additional cushioning, the flaps must overlap and since it is not adjustable it is not important that they might interfere with one another if they were moved closer together.

A last structural and functional difference between the Bane reference and applicant's claimed invention is in the construction of the bottom of the Bane spill containment device. In Bane, the bottom of the device has a seam running down the center to folded flat portions 36 and 38 thereunder that provide cushioning between the outer container and the inner container. The

bottom of Applicant's container as set forth in claim 31, for example, is substantially flat and is comprised of a single layer of flexible material. Applicant's container is designed to provide a flat stable bottom that is free of ridges so that it can lie completely flat against the inner surface of the outer container to ease loading and formation of the liner.

For the foregoing reasons, Applicant respectfully submits that all claims as amended define patentable subject matter over all the references of record. The Applicant respectfully requests allowance of all claims. The Applicant further requests that an interview by granted prior to any action on this amendment. If the Examiner has any questions regarding this amendment, he is invited to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,



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